S.B. CIVIL WRIT PETITION NO.5775/07
Smt. Kalawati Meena Vs. State of Raj. & Ors.

Date of order : 16/11/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Jai Raj Tantia for the petitioner.
Shri B.S. Chhaba, Deputy Government Advocate for State.

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The petitioner has challenged the action of the respondents initiating the no-confidence motion against him on 27.7.2007 pursuant to the order dated 9.7.2007.

The grievance of the petitioner is that there are in all 13 members of the Gram Panchayat, Rondkalan, Panchayat Samiti Karauli, Distt. Karauli but certain members belonging to a particular community grouped together and presented a no-confidence motion against the petitioner before the Chief Executive Officer, Zila Parishad, Karauli on

9.7.2007. The Chief Executive Officer by his order dated 9.7.2007 nominated Tehsildar Karauli to preside over the meeting of Gram Panchayat and fixed the meeting of the Gram Panchayat at 11.00 AM on 27.7.2007. While the notice of the meeting was issued to all the members but the competent authority failed to forward copy of the proposed motion and notice as required under clause (i) of sub-section (3) of Section 37 of the Rajasthan Panchayati Raj Act, 1994 to the petitioner. The notice was not served upon the petitioner to inform her about the date and time of the motion, which she came to know from other members only. The petitioner and other members waited at the office of the Gram Panchayat at 11.00 AM, which was the scheduled time of meeting but Tehsildar did not turn up to attend the meeting even after passing of half an hour. Thereafter they inquired about 11.30

AM as to why Tehsildar has not been able to come, but no information was received. They waited uptil 1.00 AM and thereafter disbursed. Subsequently, the petitioner came to know that Naib Tehsildar Rajendra Goyal was deputed as Tehsildar to preside over the meeting in his place, who assembled the other members and convened the meeting illegally showing the time of the meeting to be between 11.00 AM and 11.20 AM and the resolution was shown to have been carried out by majority. No such meeting in fact took place. It was argued that although in accordance with Section 37 of the Act of 1994, the Chief Executive Officer is the competent authority and in view of the provisions of sub-section (4), competent authority has to preside over the meeting and if he is unable to do so, he can nominate any other officer and in that event, the nominated officer can preside over the meeting and no other

officer can do so. The entire exercise undertaken in the meeting presided by Naib Tehsildar was therefore nullity in law and motion of no-confidence alleged to have been passed against the petitioner is therefore wholly illegal. Learned counsel for the petitioner in support of his argument relied on the judgment in Madan Lal Vs. The State of Rajasthan & Ors., S.B. Civil Writ Petition No.5563/98 decided on 7.12.1998 reported in 1999 (2) WLC 443.

On the other hand, Shri B.S. Chhaba, the learned Deputy Government Advocate opposed the writ petition and argued that the meeting was conveyed at the appointed time and that the mere fact that instead of Tehsildar, Naib Tehsildar presided over the meeting would not make any material difference because he was equally competent to do so. It was denied that the notice was not accompanied by the no-

confidence motion. He therefore prayed that the writ petition to be dismissed.

Having heard the learned counsel for the parties and perused the material on record, I find that the statutory requirement of sub-section (4) of Section 37 is that competent authority shall preside over the meeting of no-confidence motion for consideration against the Chairperson of a Panchayati Raj Institution. Proviso to sub-section (4) however has given facility to the competent authority that in case he is unable to preside at such meeting, he shall nominate any other officer in his place. The fact that is not denied even by the respondents in the present matter is that the competent authority is the Chief Executive Officer and he made the delegation in favour of the Tehsildar whereas the Tehsildar did not actually preside over the meeting. It was Naib

Tehsildar who did so. The motion for no-confidence was thus carried out in a meeting chaired by Naib Tehsildar in breach of the provisions of sub-section (4) of Section 37 of the Act.

This Court in Madan Lal, supra, which judgment has been cited by the learned counsel for the petitioner was dealing with a somewhat similar matter though with a minor difference. The proviso to sub-section (4) of Section 37 which was that time existing required the competent authority while nominating any other office to preside in his place, to also record the reasons for doing so. In that case too, the competent authority delegated the power to Sub Divisional Officer to preside over the meeting, but Sub Divisional Officer instead of himself chairing the meeting further nominated Tehsildar to do so. The Court in para 7 of the judgment in Madan Lal, supra has held

as under:

> *“7. Apart from above, even the SDO did not preside over the meeting as per direction Annexure-1 and it is the Tehsildar who had presided over the meeting as is clear from the proceedings Annexure-2. Tehsildar had no authority to be either present in the meeting or the preside over the meeting. The meeting can only be presided over by the competent authority in the present case Chief Executive Officer, or a person nominated by him on valid reasons. Nothing has been brought on record to show as to how the Tehsildar had presided over the meeting. Any such meeting not presided over by the person as prescribed under the statute, is no meeting in the eyes of law. The guarantee of safe-guarding the elected post of Sarpanch to the effect that if he is to be removed by way of no-confidence motion, he can only be removed in the meeting presided over by the competent authority, has been violated in*

the present case."

The ratio of the aforesaid case applies to the present case on all its four corners.

In view of the aforesaid discussion, the present writ petition deserves to be allowed and is accordingly allowed and the motion of no-confidence carried out against the petitioner in the meeting held on 27.7.2007 and chaired by the Naib Tehsildar is held to be illegal. This would however not preclude the competent authority either to again convene the meeting himself or making a fresh nomination / delegation in favour of another Officer in terms of proviso to sub-section (4) of Section 37 of the Act.

The writ petition is therefore allowed in the terms indicated above.

(MOHAMMAD RAFIQ), J.

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